

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|---------------------------|---|-----------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 8:08CR132 |
| |) | |
| v. |) | |
| |) | |
| JAMES E. GREER, |) | ORDER |
| |) | |
| Defendant. |) | |
| |) | |

This matter is before the court on the defendant's motion to vacate under 28 U.S.C. § 2255. Filing No. 123. Under Rule 4 of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court must perform an initial review of the defendant's § 2255 motion. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 4(b) (2011 Ed.). The rules provide that unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

In a jury trial the defendant was found guilty of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The defendant was sentenced to 188 months of imprisonment. His sentence was affirmed on appeal. The defendant filed a petition for certiorari in the United States Supreme Court, which was denied. In this § 2255 motion, the defendant alleges that he received ineffective assistance of counsel for failing to notice and obtain impeachment evidence, call witnesses, and argue that the search exceeded defendant's consent.

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief, and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. *See Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 8(a), (2011 Ed.).

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 motion (Filing No. 123) within 21 days of the date of this order.
3. Defendant's motion to leave to proceed in forma pauperis (Filing No. 124) is granted.

DATED this 20th day of June, 2011.

BY THE COURT:

s/Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief United States District Judge